



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 02, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the St. Croix County Health & Human Services in regard to Medical Assistance, a hearing was held on June 18, 2015, at New Richmond, Wisconsin.

The issue for determination is whether the county agency correctly seeks to end the petitioner's medical assistance benefits because she failed to provide her federal income tax return six months after the most recent determination of her benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
St. Croix County Health & Human Services
1752 Dorset Lane
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner renewed her medical assistance benefits in December 2014.

- [REDACTED]
3. The petitioner receives income from self-employment. She had not completed her 2014 income tax return when she renewed her benefits in December 2014. The agency verified her income with her July 2014 Self-Employment Income Reporting Form because that was the best information available and she indicated that her income had not changed since then. *Exhibit C*.
 4. On May 4, May 14, and May 29, 2015, the agency requested that the petitioner verify her income with her self-employment income with her 2014 federal income tax return. *Exhibits D, F, and L*. They requested this information because the cost of the petitioner's basic needs allegedly exceeded her household income. *Exhibit E*.
 5. The agency presented no evidence that the petitioner's basic needs exceeded her household income.
 6. The agency presented no evidence that the petitioner's SEIRFs were not consistent with her actual income.

DISCUSSION

Medical assistance applicants must verify relevant information, including income, when applying for or renewing their benefits. Wis. Admin. Code, § DHS 102.03(3)(a). If the recipient lacks the power to produce the verification requested and that verification cannot be obtained on time even with the worker's assistance, the agency must use the best information available. When this occurs, the worker must continue to attempt to obtain verification and adjust or recover benefits when the agency receives the information. The worker must explain this process to the recipient. *Medicaid Eligibility Handbook*, § 20.1.3.

The agency usually determines self-employment income from IRS tax forms. But it must use a Self-Employment Income Report if the recipient claims her circumstances have changed since the previous year. *Medicaid Eligibility Handbook*, § 15.6.5.1. The petitioner's medical assistance benefits were last determined in December 2014 when the agency established her self-employment income using a Self-Employment Income Report form from July 2014. It did not use her 2014 federal income return because she had not finished it yet and she indicated that her income had not changed since July. But in earlier renewals she has reported that her circumstances *had* changed, which appears to be why the agency used a SEIRF in July 2014. In May 2015, the agency requested that she verify her self-employment income with her 2014 federal income tax return. She objected, contending that as an ongoing recipient whose benefits were not due for renewal she should not have to verify information if she did not report a change of circumstances.

An agency must redetermine eligibility at least once a year. But it must also do so when it has information that the recipient's circumstances have changed or it has a reasonable basis for believing that she is no longer eligible for medical assistance. Wis. Admin. Code, § DHS 102.04(3). Agencies are instructed not to "verify information already verified unless there is reason to believe the information is fraudulent or differs from more recent information." *Medicaid Eligibility Handbook*, § 20.1.4. The worker testified that the income the petitioner reported in her SEIRF conflicted with that reported in income tax return and that her housing expenses exceeded her income.

These were good reasons to ask the petitioner to verify her income with her federal income tax return. But at an administrative hearing the agency cannot merely assert its position; it must also support its contentions with evidence. It has not done so. First, it provided no evidence that in December 2014 it was allowing her benefits to continue contingent upon her providing her 2014 income tax return after she completed it. It certainly would have made sense for it to request this because under the circumstances existing in December—she had an ongoing business whose circumstances allegedly remained the same—a tax return was the proper form of verification. But without some evidence showing what form of

verification it asked for in December 2014, it has not established a basis for ending the benefits on the ground that she failed to complete the verification process, as *Medicaid Eligibility Handbook*, § 20.1.3, allows.

Because the agency has not demonstrated it had authority to request the tax return in May 2015 as part of the petitioner's continuing obligation to complete the verification process begun in December 2014, it must demonstrate that her circumstances have changed or that it has a reasonable basis for believing that she is no longer eligible for medical assistance. Wis. Admin. Code, § DHS 102.04(3). The agency did not provide evidence of its claim that the petitioner's housing expenses exceeded her household's income. It could have done this by providing the latest FoodShare decision, which probably would include shelter costs. Nor did it show the basis for its conclusion that her income tax return would show more income than her SEIRF. The agency's ultimate claim is that the petitioner is not entitled to public benefits because she failed to adequately document her income. Its action now fails because it has failed to adequately document its own claim. Therefore, the petitioner's benefits must continue.

That said, nothing prevents the agency from requesting her federal income tax return again and moving to end her benefits under Wis. Admin. Code, § DHS 102.02, if she refuses to provide if it follows proper procedures. The petitioner argued that it was discrimination for the agency to ask for this information from her unless it demonstrated that it asked it of everyone else. This is nonsense. Agencies have limited resources and they have a right to limit their investigations to situations where there is a reasonable basis for believing something is amiss. But when those matters come to a hearing, the agency must be ready with admissible evidence to prove its case. It is the agency's lack of evidence now rather than any malfeasance when it requested the verification that doomed its case.

I point out to the petitioner that this is not a criminal case in which her refusal to cooperate with authorities cannot be used against her. There is no bar in civil cases to self-incrimination. She labeled the agency's request "over-verification, harassment, fraud" and said she had planned to contact her elected representatives. There is nothing onerous about providing a tax return. Indeed, it would have been much simpler for her to do this than to make the many telephone calls, write the many letters, draft an appeal, prepare for the hearing, appear at the hearing, and contact her legislator, all of which she did or threatened to avoid providing her tax return. She has a right not to be harassed, but when someone goes to the lengths she did to avoid a simple request, it raises a reasonable suspicion that she is trying to hide something. I did not consider this in the current matter because the agency did not provide enough documentation to support its claim. But this does not mean that I will ignore such vigorous attempts to avoid providing basic information in future cases.

Finally, nothing prevents the agency from referring this matter to the district attorney if it finds evidence that the petitioner has committed fraud. In fact, Wis. Admin. Code, § DHS 102.05, specifically requires it to do so if that happens:

When the agency director or a designee has reason to believe that fraud has been committed by an applicant or recipient, or by the representative of an applicant or a recipient, the case shall be referred to the district attorney.

CONCLUSIONS OF LAW

The agency cannot end the petitioner's medical assistance for lack of verification requested six months after the last time her case was reviewed because it has not demonstrated that it had authority to request the verification.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it certify that it has discontinued its attempts to end the petitioner's medical assistance because she failed to provide her 2014 federal income tax return to verify her income. Nothing in this decision prevents the agency from requesting this information again if it can establish a legal basis for doing so.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

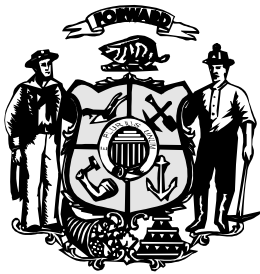
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of July, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



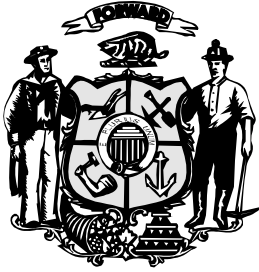
State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Telephone: (608) 266-3096
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The preceding decision was sent to the following parties on July 20, 2015.

St. Croix County Health & Human Services
Division of Health Care Access and Accountability



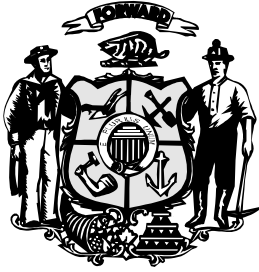
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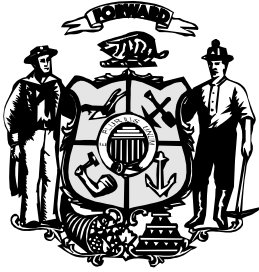
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The preceding decision was sent to the following parties on July 21, 2015.

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Division of Health Care Access and Accountability